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**IN THE  
COURT OF APPEALS OF INDIANA**

KATHY JO WARD, )  
)  
Appellant-Defendant, )  
)  
vs. ) No. 48A05-0801-CR-13  
)  
STATE OF INDIANA, )  
)  
Appellee-Plaintiff. )

APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Fredrick R. Spencer, Judge  
Cause No. 48C01-0612-MR-480

**APRIL 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Kathy Jo Ward appeals the sentence imposed after her conviction of voluntary manslaughter, a Class A felony. We affirm.

## ISSUE

Ward raises one issue for our review, which we restate as: Whether the imposition of the advisory sentence was inappropriate.

## FACTS AND PROCEDURAL HISTORY

On December 17, 2006, Ward confronted her husband, John, about a voice mail message that indicated he was engaged in a romantic relationship with another woman. John initially denied the relationship before admitting he had several girlfriends and was still sleeping with his ex-wife. He informed Ward that she might want to get checked for sexually transmitted diseases. He told her that he had never loved her and that he had been using her.

The next morning, Ward went downstairs and removed a handgun from her truck. She cocked the handgun while downstairs, went upstairs, placed the barrel of the gun to her sleeping husband's temple, and pulled the trigger. The bullet entered John's left temple, passed through his brain, and was later recovered from the right side of his head. Ward put the bed sheet over John's head and began to collect money so that her parents would be able to take care of her son. She then drove to her parents' house and told her parents that she had shot her husband.

Ward was subsequently arrested and charged with murder. The jury found her guilty of the lesser-included offense of voluntary manslaughter, and the trial court gave

her the advisory sentence of thirty years. The trial judge noted that Ward's shooting of a sleeping victim was a "nature of the circumstances" aggravator. The trial court further found the following mitigators: (1) Ward's genuine expression of remorse; (2) Ward's lack of criminal history; (3) Ward's productive life; (4) Ward's cooperation with law enforcement; and (5) the hardship on Ward's fifteen-year-old son. The trial court concluded that the mitigators were "important," and that a weighing of the mitigators and the aggravator warranted the advisory sentence. Ward now appeals.

### DISCUSSION AND DECISION

Ward contends that the advisory sentence of thirty years is inappropriate. She urges this court to reduce her sentence to the statutory minimum of twenty years.<sup>1</sup>

A sentence authorized by statute will not be revised unless the sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B). We must refrain from merely substituting our opinion for that of the trial court. *Sallee v. State*, 777 N.E.2d 1204, 1216 (Ind. Ct. App. 2002), *trans. denied*. In determining the appropriateness of a sentence, a court of review may consider any factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. The "nature of the offense" portion of the appropriateness review concerns the advisory sentence for the class of crimes to which the offense belongs; therefore, the advisory sentence is the starting point in the appellate court's sentence review. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on rehearing*, 875

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<sup>1</sup> Ind. Code § 35-50-2-4 provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years.

N.E.2d 218 (Ind. 2007). The “character of the offender” portion of the sentence review involves consideration of the aggravating and mitigating circumstances and general considerations. *Williams v. State*, 840 N.E.2d 433, 439-40 (Ind. Ct. App. 2006).

In considering the nature of the offense, we note that Ward placed a gun to her sleeping husband’s temple and pulled the trigger. The shooting of a sleeping victim has been recognized as a valid “nature of the circumstances” aggravator. *See Angleton v. State*, 686 N.E.2d 803, 816 (Ind. 1997). However, our supreme court has characterized this factor as less than significant. *See Crawford v. State*, 770 N.E.2d 775, 783 (Ind. 2002) (revising the trial court’s sentence to the presumptive sentence after finding that the trial court erred in enhancing Crawford’s sentence when this and other less than significant aggravators were weighed against the mitigators). We conclude that this circumstance of an offense, where a person shoots a sleeping, defenseless victim, while not of much significance as an aggravator supporting enhancement of a sentence beyond the advisory sentence, does warrant the imposition of at least the advisory sentence.

In considering the nature of the offender, we note that Ward, who was thirty-six years old at the time of the offense, had no criminal history. She had been a productive member of society and had been employed at Sallie Mae for eight years. She had achieved an Associates Degree from Indiana Business College and was working on a bachelor’s degree at the time of the shooting. She supported her teenage son without assistance from his biological father. She expressed sincere remorse for the shooting, and she cooperated with the police during the investigation.

If the appropriateness of a sentence under App.R. 7(B) was based merely on the character of the offender, we would find that the imposition of the advisory sentence was inappropriate. However, our evaluation also includes the nature of the offense. The shooting of a sleeping, defenseless victim warrants the sentence imposed by the trial court. Accordingly, we do not find the trial court's imposition of the advisory sentence to be inappropriate.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.